

9.20 ✓

NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

FILE COPY

SUPERIOR COURT
CIVIL ACTION
NO. 06-0790 C

*Native
Sent
9/20/07
M.L.
a.o.B.
RAH, Jr.
L. B. S. + H.
(mb)*

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff

FILE COPY

v.

NEW VENTURES ASSOCIATES, LLC,

Defendant

**MEMORANDUM OF DECISION AND ORDER
ON COMMONWEALTH'S MOTION FOR ORDER GRANTING
SITE ACCESS TO PERFORM RESPONSE ACTION UNDER G.L. c. 21E.**

The Commonwealth has moved for an order which would allow the Department of Environmental Protection (DEP) to enter the Crow Lane Landfill, owned by the defendant, New Ventures Associates, LLC (New Venture), in Newburyport, Massachusetts. The DEP desires to conduct certain response actions pursuant to G.L. c. 21E and 310 C.M.R. 40.000.

The Commonwealth contends that the noxious gases being released from the landfill are a public nuisance that threaten the public health, safety, and welfare. The three response actions that the DEP seeks to conduct are: (1) placing a temporary cap over that section of the landfill that is releasing the noxious gas, (2) installing additional collection wells to control the release of the gas, and (3) sample the soil at the perimeter berm of the landfill. DEP advised New Ventures

that it intended to perform the above-referenced measures unless New Ventures agreed to do so. New Ventures declined to so agree and objected to the DEP's proposed actions.

The court issued an order to show cause why an order granting site access should not be allowed. On the return of that order, a hearing was held. The DEP made a comprehensive presentation supported by detailed affidavits. The affidavit of John A. Carrigan, a scientist who is the superintendent of the Solid Waste Management Section, contains well in excess of 100 pages of technical data and communications. 7 voluminous bound affidavits with supporting documents were submitted by scientists employed by Shaw Environmental, Inc. (Shaw). Shaw performed engineering and assessment services for the DEP at the Crow Lane Landfill (Landfill). A compendium of 6 affidavits of persons living in the immediate vicinity of the landfill regarding the effects of the nuisance was also provided to the court. The final affidavit was prepared by Michael Hutcheson of DEP and dealt with the effect on humans of exposure to hydrogen sulfide. Finally, the Commonwealth submitted an excellent 21 page memorandum. The Commonwealth argued, in the alternative, that if the Court did not grant the relief requested, it should order the defendant to perform it.

The defendant objected to the motion, arguing that no emergency had been shown. The defendant also contended it had taken action within the prior week that abated any immediate problem.

It is clear that when the specific controversy began, the release of noxious gases from Section Phase 1A of the landfill required speedy resolution. However, the defendant entered into a preliminary injunction by stipulation. Compliance with that injunction will remove the immediate threat. The court adopts that language so that the Commonwealth can directly enforce

those provisions if there is a breach and will not have to rely on the City of Newburyport actions.

The problem of the wells may not be an immediate threat but appears to be a necessary safeguard. The defendant is unrealistic when it demands an approval of the final closure plan as a precondition to installing the final three wells and tying them into the system.

What is reasonable is for the defendant to provide information to the DEP regarding the locations of the 3 wells and then have the defendant proceed expeditiously to install them after approval by the DEP.

The proper construction of the berm area is critical. If a section of a berm "blows out", the result could be substantial. However, there was no showing of an immediate threat that would, at this time, warrant the relief sought. The court is hesitant to interfere with the statutory scheme for closing landfills.

ORDER

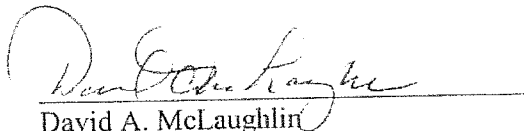
A preliminary injunction will issue ordering the defendant, New Ventures Associates, LLC, to:

1. Place a temporary cover consisting of acceptable clay-like soils to a depth of at least one foot, over the so-called Phase 1A area of the Landfill, and replace the tarps in that area over the temporary cover as required by DEP with respect to such tarps, as a measure to abate any odors;
2. Properly repair by adhesive patching all tears in the existing flexible membrane layer ("FML"), including, without limitation, tears around pipes and other penetrations, and demonstrate that all repairs are sealed and secure, provided that New Ventures shall make continuing good faith efforts to have those repairs made by welding to achieve a permanent

solution;

3. Within 15 days of this order give notice to the Commonwealth of the locations, including elevations, where the defendant plans to install gas extractor wells identified as EW-7, EW-10 and EW-13. After approval of said locations, New Ventures Associates, LLC is to proceed, forthwith, to install said wells and complete the landfill gas system header piping referenced in DEP's correspondence dated June 27, 2007.

4. The Commonwealth is authorized to enter the defendant's premises to monitor compliance with this order.


David A. McLaughlin
Justice of the Superior Court

Dated: *Sept 20, 2007*

10/10/10

